

REMARKS/ARGUMENTS

Applicant responds herein to the Office Action dated August 21, 2008. A request for extension of time (1 month) and the fee therefor are enclosed.

Prior to filing the instant Amendment, the Applicant's undersigned representative has telephoned the Examiner and requested telephone interview on the subject matter of this application. He was informed by the Examiner that she will not conduct a substantive interview until after an actual Amendment is filed because the application is under final rejection. Accordingly it is respectfully requested that the Examiner consider and telephonically contact the undersigned representative prior to issuing the next Office Action.

Claims 17, 35 and 53 are being rejected under the second paragraph of 35 U.S.C. §112 on the basis that "data transfer speed while downloading is adjusted" is unclear. However, the Examiner has interpreted the phrase in light of the specification to mean that "the data transfer speed is adjusted". The claims have been amended accordingly and since the Examiner has indeed examined the application on the basis of that understanding, it is submitted that the §112 rejection has been mooted and no "new" issue is being raised herein after the issuance of the Final Rejection.

Substantively, claim 17, 35, 36, 53 and 54 are stated to be anticipated by Servan-Schreiber (6,892,354). Claims 4-6, 10, 22-24, 28, 40, 42 and 46 are stated to be obvious over the aforementioned Servan-Schreiber reference, in further view of Boe et al. (6,236,975). Further, claims 7, 25, 29, 43 and 47 are stated to be obvious over Servan-Schreiber, Boe et al. in further view of "Official Notice". Still further claims 12-16, 30-34 and 48-50 are stated to be obvious in view of Servan-Schreiber, in view of Official Notice. Reconsideration is requested, in view of the following remarks.

Preliminarily, please note that claims 1-16, 18-34 and 37-52 have been canceled. Thus, the claims remaining in the application are independent claims 17, 35 and 53, and dependent claims 36 and 54. In all of the mentioned independent claims there is present the limitation that "the data transfer speed is adjusted". Whether or not the prior art teaches that feature is central to the rejections of record. According to the Office Action, "...Servan teaches...wherein download speed of data is adjusted based on...(column 3, lines 30-67 and column 4, lines 1-13)".

Upon careful review of the text specifically cited by the Examiner, Applicant respectfully

disagrees that that text discloses or even suggests adjusting the download speed of the data. This objection is also applicable to ¶38 of the Office Action wherein the Examiner states that "...data transfer speed is adjusted, and Servan does indeed teach this limitation (i.e. an advertising page is displayed for a minimum time period or until a new page is sufficiently downloaded) (column 3, lines 22 to column 4, lines 41)". But in fact, it is imperative to appreciate that, in fact, the reference adjusts the amount of time that the advertisement is shown, not the download transfer speed of the data.

Thus, Servan's description of an operation wherein "an advertising page is displayed for a minimum of time." means and relates to an operation where the advertisement is displayed for a minimum time period. However, this operation does not adjust the download speed. Secondly, Servan's description of an operation whereby "an advertising page is displayed... until a new page is sufficiently downloaded" means and relates to a displaying procedure in which the advertisement persists for certain time periods and does not disappear before the downloading of some data is completed. However, there is no hint in this text anywhere of the download data transfer rate or speed being adjusted in any manner. Indeed, one of ordinary skill in the art in reviewing this reference would be forced to conclude that, in Servan, the downloading speed remains the same regardless of the operational state. It is never adjusted.

The foregoing comments are also applicable to independent claims 35 and 53 and by extension to claim 36 and 54 which are dependent claims, and which relate back to one or the other of the aforementioned independent claims.

In as much as the prior art does not disclose or suggest this feature, it is respectfully submitted that all the claims in the application are patentably distinguishable from the prior art.

Accordingly, the Examiner is respectfully requested to reconsider the application and allow the claims amended in the present case to issue.

Respectfully submitted,

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